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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	)	CC Docket No. 00-218
In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Arbitration	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

WORLDCOM'S OPPOSITION TO VERIZON'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO DEFER CONSIDERATION OF CERTAIN ISSUES

WorldCom, Inc. ("WorldCom") opposes Verizon Virginia, Inc.'s ("Verizon") motion to keep critical commercial arrangements out of the interconnection agreement that the Commission is arbitrating. Verizon claims specifically that the Commission should not consider certain matters that it claims "either have been decided by this Commission in a prior rulemaking proceeding or are pending in an ongoing ruling proceeding." Motion of Verizon to Dismiss, or, in the Alternative, to Defer Consideration of Certain Issues ("Motion") at 5. As demonstrated below, Verizon's Motion is utterly meritless.

First, as to claims allegedly currently pending before the Commission or the courts, Verizon's motion (to the extent it does not simply mischaracterize WorldCom's claims) proceeds from a fundamental misunderstanding of the task facing the Commission in this proceeding. This is not a rulemaking proceeding, and it is not a substitute for one. This proceeding is designed to produce an interconnection agreement which will govern relationships between the contracting parties only, and must comply with existing and developing state and federal law. Pursuant to the Act, the parties are free to agree to matters that are unaddressed or unresolved by positive law. If they are unable to agree, they are free to seek arbitration pursuant to the 1996 Act – indeed, disputes over such matters are the bread and butter of section 252 arbitrations.

Contractual terms that address commercial issues that happen to be the subject of a pending nationwide rulemaking or adjudication therefore are not an "end run" around rulemakings, nor is the state commission charged with resolving the parties' disputes over such issues "prejud[ing] the outcomes of those rulemakings without the benefit of wide-ranging industry input and a complete record." Motion at 7. Instead, a state commission is charged with resolving a particular dispute raised by the parties based on the record before it at the time. By so doing it is not foreclosed from reaching a different result when formulating a rule of general application in a subsequent rulemaking based on a different record. Thus, what the FCC decides here when it "has simply stepped into the shoes of the Virginia state commission," *id.* at 10, based on the Virginia-specific record before it, in no way binds it in any subsequent national rulemaking proceeding. The FCC's job here is to resolve disputes over the proper contractual relationship between WorldCom (and other competitors) and Verizon in Virginia based on the record before it in this arbitration proceeding. The claim that it should not decide anything in this context that it might later decide in the context of a nationwide rulemaking simply confuses the nature of the Commission's role here in an attempt to deprive competitors of the commercial rules they need in order to compete with Verizon in Virginia.

Verizon nevertheless insists that if the background law relevant to a particular contract term is disputed or will be subject to change, then that term is not a proper subject of negotiation or arbitration. But if that were so a great many of the most critical commercial practices would be unaddressed in WorldCom's interconnection agreements, and WorldCom would be unable to enter Virginia's local markets until final resolution had been reached on the myriad unresolved or ambiguously resolved local competition issues currently before state commissions, the FCC, and the state and federal courts. [1]

It is unsurprising that Verizon seeks to avoid resolution of these critical issues, as failure to reach resolution benefits only Verizon. WorldCom is seeking an interconnection agreement because it needs to have a complete set of business rules governing its relationship with Verizon if it wishes to offer telecommunications services in Virginia – rules governing such things as intercarrier compensation, combinations of elements, unbundling, and the whole gamut of other issues that need to be resolved in order for WorldCom to offer service in the Commonwealth.

1/ If a rule is later adopted by this Commission in a rulemaking docket that conflicts with a contract provision arbitrated here, the contract would simply be changed to reflect the change in

Verizon, on the other hand, needs virtually no cooperation from WorldCom in order to continue to offer local service, and therefore has every interest in an agreement that does *not* provide complete business rules on these and other subjects. But Congress understood this asymmetry, and required that state commissions or, as here the FCC, resolve *all* open issues. If, as here, the incumbent refuses to enter into meaningful negotiations with its would-be competitors, then the result is, as Verizon derisively puts it, that "the Commission [will have] to create an entire interconnection agreement from scratch." Motion at 4. WorldCom has every right to "an entire interconnection agreement," and the Commission should reject Verizon's transparent efforts to deprive WorldCom of that right. Verizon's attempt to take such "disputed" matters off the table should be rejected out of hand.[2]

Second, as to matters that allegedly have already been decided on a nationwide basis, Verizon is quite correct that state arbitrations cannot set contract terms that violate federal law, and that parties therefore should not use arbitration proceedings "to revisit existing Commission regulations." Motion at 8. But WorldCom has not asked for any contract provision that violates federal law or a Commission rule. Instead, WorldCom has primarily asked the Commission to

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law – as has happened with countless interconnection agreement provisions all over the country in the wake of various court decisions and Commission orders.

2/ In this regard, section 252 proceedings are fundamentally unlike proceedings under section 271, where the FCC has made clear that it would be unfair to hold Bell Operating Companies to standards that have not yet been developed, and where the FCC determined that the 90-day review period for section 271 applications made it a poor vehicle for "mandatory resolution for major industry-wide issues already pending in traditional notice-and-comment rulemaking proceedings." Motion at 7 (quoting FCC). Here, in contrast, it would be unfair to competitors to refuse to resolve disputes over appropriate commercial arrangements simply because they relate to industry-wide issues that may be pending in some other fora.

resolve disputes about the appropriate interpretation and application of Commission regulations. Although Verizon may not agree with WorldCom's proposed interpretation, that does not provide a basis to dismiss WorldCom's claims. Indeed, the fact that the parties cannot agree on the proper application of existing regulations highlights the need to resolve the issue in the course of this arbitration.

In those instances in which WorldCom has asked the Commission to impose requirements beyond those already mandated by current FCC rules, it has done so in a way that is completely consistent with those rules. The FCC's unbundling rules, for example, are a floor, not a ceiling, and while states must unbundle all elements that have been unbundled by the FCC, they also have the *obligation* "to consider whether to require the unbundling of *additional* network elements." Rule 317(d) (emphasis added). In making that determination, states must apply the FCC's Rule 317 governing unbundling to the particular circumstances present in the state as set out in the record before it. *Id.* Because the FCC is standing in the shoes of the Virginia Commission, in response to any parties' request for unbundling network elements beyond those already unbundled nationally, it must apply the FCC's rules and determine whether any requested additional unbundling meets the relevant standard. Doing so does not represent a "collateral attack" on the Commission's unbundling rules, but merely represents an application of the cooperative federalism that underlies those rules.

With these general observations in mind, WorldCom addresses Verizon's specific allegations.

1. Intercarrier Compensation for ISP-Bound Traffic

Verizon first asks the Commission to dismiss the parties' claims with respect to ISP-bound traffic on the ground that the Commission has now determined that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b) of the Act. Motion at 9-10. As Verizon is well aware, the parties' petitions were filed before the Commission's most recent order issued, and thus were not framed in a manner that took account of that decision. That does not mean, however, that the claims should be dismissed, but simply means that the testimony and briefing submitted by the parties will have to take account of the Commission's most recent Order. Indeed, because the parties have been unable to agree on how to implement the Commission's Order, it remains critical that this issue be arbitrated now.

Verizon also asserts that these claims should be dismissed because a state commission no longer has any jurisdiction to decide any issue related to ISP bound traffic. In the ISP Remand Order, however, this Commission held only that state commissions no longer have authority to address the rates for, and rate structure of, ISP-bound traffic when ILECs agree to charge Commission set rates for all exchange of traffic, including voice traffic. As with most Commission Orders, however, the rules established there must be translated into concrete operational language. Because the parties have not been able to agree on such language, it is appropriate for this Commission to arbitrate the issue.

To the extent Verizon suggests that *any* issue involving ISP bound traffic – including the issue of how to translate the Commission's Order into a working agreement between the parties – is inappropriate for resolution in a state arbitration proceeding, that suggestion is wrong. The only other procedural mechanism for implementing the Commission's Order would be a federal tariff, and competing filed tariffs are not well suited to resolve issues (such as how traffic is measured, and how the parties determine if Verizon is offering to exchange all traffic subject to section 251(b)(5) at the same rate) which must be addressed in a contested proceeding. In any, event the Order appears to contemplate that issues surrounding the compensation for exchange of such traffic will be included in interconnection agreements. *See, e.g., ISP Remand Order* ¶ 78 (giving examples of compensation a LEC will receive "pursuant to a particular interconnection agreement"). At a minimum, the fact that the parties are unclear about how the Order is to be operationalized demonstrates that it is necessary for the Commission to resolve issues surrounding compensation for ISP-bound traffic.

2. Combinations

Verizon's Motion to Dismiss Issue III-6, which addresses combinations of unbundled network elements, challenges an issue that WorldCom has not raised. In its petition, WorldCom seeks a determination about the scope of an existing rule -- 47 C.F.R. § 51.315(a). It is clear that the parties disagree about the rule's application. But the mere fact that they disagree does not transform WorldCom's petition into a request that the Commission readopt currently vacated rules. To the contrary, the dispute merely highlights the need for resolution during this arbitration.

Specifically, Verizon asserts that WorldCom has asked the Commission to reinstate Rules 315 (c)-(f) and to issue an unlawful order regarding Verizon's obligation to provide combinations of unbundled network elements. Motion at 10-12. That assertion squarely misrepresents the issues and arguments presented by WorldCom's Arbitration Petition. Indeed, it appears that Verizon has not even read the Petition. WorldCom indicated quite explicitly in the

Petition that "In this arbitration, WorldCom does not base its right to the combination upon 47 C.F.R. § 51.315(c), the validity of which is pending before the Supreme Court, and which focuses upon combinations that are not ordinarily combined in the ILECs network."[3]

In its Motion to Dismiss, Verizon never mentions the actual arguments or issues which WorldCom has raised. These arguments are not based on rules which have been vacated, nor are they arguments which the Commission has previously rejected. Neither the Commission, the 8th Circuit, nor the Supreme Court have foreclosed these arguments.

The Act and FCC regulations require incumbent LECs to provide combinations of unbundled network elements. 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.315(a), (b). The combined effect of the Act and these regulations is 1) to entitle requesting carriers to combinations of network elements where the elements are already combined, such as in an existing dial tone arrangement and 2) to entitle requesting carriers to new (not currently existing) combinations as well (for example, second lines) where Verizon ordinarily combines such elements in its network.

With respect to provision of existing combinations of network elements, 47 C.F.R. § 51.315(b) provides that these existing arrangements shall not be separated by ILECs except upon request. With respect to new combinations, 47 C.F.R. § 51.315(a) provides that "[a]n incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service." This regulation is simply a restatement of section 251(c)(3). The Commission has stated that section 251(c)(3) (and thus 47 C.F.R. § 51.315(a) as well) requires

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3/ WorldCom's Statement of Unresolved Issues, Issue III-6, p. 44, n.12.

incumbent LECs to perform the functions necessary to combine requested elements in any technically feasible manner. Local Competition Order ¶ 293. Thus, WorldCom may order new combinations under 47 CFR §51.315 (a) so long as they are technically feasible, and Verizon is obligated to perform the functions necessary to combine the elements and to provide the combination pursuant to 47 C.F.R. § 51.315(a). That rule is in effect and has never been challenged.

The Commission has also noted that its regulations require incumbent LECs to perform the functions necessary to combine those elements that are ordinarily combined within their network. Local Competition Order ¶ 296. In WorldCom's view, taken together, the Commission's statement that ILEC's must provide combinations of network elements which it ordinarily combines in its network and the requirements of section 251 (c)(3) require ILECs to provide combinations of network elements which ordinarily exist in its network, even if not currently combined. Rules (c)-(f) on the other hand address combinations of network elements "even if those elements are not ordinarily combined in the incumbent LEC's network." That is, these sections address novel combinations rather than ordinary combinations. As noted above, WorldCom only seeks ordinary combinations in this proceeding and therefore is proceeding under rule 315 (a).[4] Although Verizon may claim that rules (c)-(f) should be construed broadly

4/ Finally, the Supreme Court has held that nothing in the Act mandates that elements be provided only in separated form. The Court rejected the argument that in requiring the incumbent to provide network elements in a manner that allows carriers to combine them, the Act contemplated the provisioning of elements only in physically separate pieces. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 394 (1999). The Court clarified that "unbundled" means separate prices, not physically separated. The Court also stated that § 251(c) "does not say, or even remotely imply, that elements must be provided in discrete pieces, and never in combined form." Id. Therefore, the FCC's holding that ILECs must perform the functions necessary to combine requested elements under 47 U.S.C. § 251(c)(3), which is restated in 47 C.F.R.

to cover ordinary as well as novel combinations, neither the FCC nor any court has accepted this construction, and Verizon's assertion that WorldCom is asking for relief inconsistent with a court order is entirely without merit.[5] Moreover, as explained above, this merely highlights why resolution of the parties' interpretations of the Commission's rules is critical.

Indeed, resolution of this issue is particularly critical to new entrants. Verizon ordinarily combines the elements in its network, which comprise the unbundled network element-platform. UNE Remand Order ¶ 481. Verizon also typically combines the elements needed to provide second lines to customer premises. Therefore the Commission should, for example, specifically confirm that Verizon is obligated pursuant to 47 C.F.R. § 51.315 (a) and (b) to provide combinations of network elements so that WorldCom may provide both the platform, and second lines to customers (whether or not the second lines are currently in service) because Verizon ordinarily combines these network elements in its network.

3. Loop-Transport Combinations

With respect to EELs, Verizon asserts that WorldCom is attempting to use this proceeding to "circumvent or reverse the *Supplemental Order* and the *Supplemental Order Clarification*." This assertion is specious. WorldCom's proposed contract language could be adopted by any state commission in a contract arbitration, and would in no way circumvent or reverse the *Supplemental Order* or the *Supplemental Order Clarification*.

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§ 1.315(a), has been affirmed by the Supreme Court.

5/ Indeed, Verizon's position would violate the Act's nondiscrimination requirement. See 47 U.S.C. § 251(c)(3). This provision requires Verizon to combine for its competitors those elements it ordinarily combines for itself.

In the *Supplemental Order* and the *Supplemental Order Clarification*, the Commission temporarily limited conversions of loop-transport combinations to unbundled network element pricing to those circumstances where a requesting carrier is providing a "significant amount of local exchange service." The Commission went on to find that a requesting carrier is providing such service if it meets any one of three circumstances. The first is where a requesting carrier is the only local service provider of a particular end user. In such a circumstance, that carrier may use loop-transport combinations to carry any type of traffic, including "100 percent interstate access traffic." Verizon's intimation that the Commission has construed the Act to forbid the use of unbundled network elements for access services is therefore wrong.

To the contrary, in the *Supplemental Order Clarification*, the only reason cited by the Commission for imposing a temporary requirement that a requesting carrier provide a "significant amount of local exchange service," was that the Commission had not completed an analysis of whether requesting carriers are impaired if denied access to loop-transport combinations for the provision of other services. The fact that the FCC has yet to undertake the statutory impairment analysis on a nationwide basis in no way prohibits state commissions (or the FCC standing in their shoes) from making that analysis in a given state. As indicated above, under section 51.317 of the Commission's rules, a state commission could itself make this determination and require additional unbundling of loop-transport combinations if it found based on the record before it that requesting carriers are impaired in the state in providing services other than local exchange service without such unbundling. In a proceeding such as this where this Commission acts as a state commission, it therefore plainly may consider whether or not additional unbundling is warranted.

Moreover, under the Commission's current rules ILECs are required to provide non-discriminatory access to loop-transport combinations in circumstances where they refuse to unbundle switching for end users that subscribe to four or more lines at a single location. Non-discriminatory access necessarily means that requesting carriers must be able to use those loop-transport combinations in the same manner as the ILEC. Because Verizon has sought to include this restriction in the contract, and itself uses its facilities to provide "100 percent interstate access service," as well as local exchange service, requesting carriers are entitled to order and use loop-transport combinations to provide any telecommunications service, as Verizon itself does.

4. Switching

Verizon asserts that "AT&T and WorldCom also seek to have the Commission amend its rules concerning the scope of switching unbundling." Motion at 14. Again, this assertion is a mischaracterization of the issue raised by WorldCom in the Arbitration Petition. WorldCom has requested that the Commission reject the strained interpretation that Verizon has placed on the Commission's UNE Remand Order and to confirm WorldCom's understanding of the Order. WorldCom has not requested that the Commission amend its rules. Rather, WorldCom has requested that the Commission provide a clarification of the rule because Verizon and WorldCom disagree on what the rule means. Contractual language that clarifies the parties' practices under allegedly ambiguous positive law anticipates and resolves disputes before they arise is precisely the type of dispute that should be resolved by commissions' arbitrating interconnection agreements pursuant to the Act.

Specifically, WorldCom asks the Commission to clarify whether the "four or more lines" restriction for denying unbundled local switching applies on a "per location" or a "per customer" basis. The issue arises, for example, in the context of a small business customer with four locations and one line at each location. Verizon's interpretation of the UNE Remand Order equates this small business customer with a medium business customer with four lines at one location, and denies WorldCom the ability to serve this small business customer via UNE-P.

In WorldCom's view, the more reasonable interpretation of the "four or more lines" restriction for denying unbundled local switching is that it applies to a customer that has four or more lines at a single location. A business customer that has four single lines at four different locations should be entitled to receive service from WorldCom through UNE-P. This position is supported by the Commission's decision in the UNE Remand Order. In the UNE Remand Order, the FCC set forth its rationale for setting forth a "four or more lines" restriction on the availability of unbundled local switching. UNE Remand Order ¶ 293. The FCC indicated that the local switching UNE should be available to serve the residential mass market and the small business market, but not the medium to large business market. A small business customer with four locations and one line at each location is very similar to a residential customer with one line at his home. Many customers will have multiple locations and may seek in aggregate four or more lines, but seek fewer than four lines at one or more locations. The impairment analysis performed by the Commission relates to the ability of a CLEC to use its own switching to offer service at a particular location. It is absurd to interpret the Commission's rules to deny CLEC access to switching, for example, to serve a small bakery company because that company has four locations in a city, each with one telephone line. The Commission's conclusion and rules should and were meant to apply on a location-specific basis.

Second, the only reasonable interpretation of the EELs portion of these rules is that the ILEC seeking to restrict the use of unbundled local switching must provide unrestricted access to loop-transport combinations; Verizon improperly interprets the EELs portion of these rules to be limited to existing loop-transport combinations that also meet the safe harbor usage restrictions in the Supplemental Order Clarification.[6] WorldCom is entitled to have this dispute resolved so it knows when it is allowed to make use of unbundled switching.

In sum, WorldCom does not seek to have the Commission amend its rules concerning the scope of unbundled switching. WorldCom merely seeks a ruling which rejects what it believes to be Verizon's unreasonable interpretations of the existing rule.

5. Line Sharing and Line Splitting

Verizon also asks the Commission to dismiss Issue III-10, dealing with line sharing and line splitting, and characterizes the issue in this fashion: "The Petitioners' proposals go beyond Commission requirements that currently govern the industry and prejudge the Commission's on-going evaluation of many of the numerous and complex technical and operational issues surrounding their proposals in connection with the Line Sharing Reconsideration Order." Motion at 16. Verizon has not fairly characterized the issue presented by WorldCom. In its Arbitration Petition WorldCom explicitly acknowledged the many pending proceedings addressing line sharing and line splitting and said:

6/ *Supplemental Order Clarification* at para. 22.

> The Commission has indicated that it will address a large number of issues related to the provision of advanced services and line splitting in other proceedings including the Advanced Services Order II. The issues which the Commission intends to address include items such as the collocation of CLEC line cards in the ILEC's remote terminal, the various means of transmission of CLEC customer data signals back to the central office from the remote terminal, the establishment of a UNE-data platform, splitter ownership, the packet switching UNE, and others. **Since these issues will be addressed in these other proceedings and not in this arbitration,** WorldCom requests herein that Verizon be directed to promptly amend the Interconnection Agreement entered into between the parties to include provisions consistent with the Commission's decision in those proceedings.[7]

WorldCom has not asked the Commission to prejudge any issues pending in those cases. To the contrary, WorldCom seeks an Interconnection Agreement containing the basic terms and conditions by which Verizon will provide line sharing and line splitting. Verizon's current contract language lacks the detail necessary for WorldCom to order such services, including such basic terms as contract language specifying that line splitting can be ordered as a UNE-P order. Similarly, WorldCom has proposed detailed language regarding the loop qualification data which Verizon must provide pursuant to the UNE Remand Order. This language is missing from Verizon's proposal.

Verizon nevertheless argues that WorldCom's proposed contract language should be dismissed because in the Massachusetts section 271 proceeding the Commission found that "Verizon's proposed language satisfies [the Commission's] requirements under Commission rules." Motion at 16. Verizon is quite right that the FCC found that "Verizon's interconnection agreement amendment [regarding line splitting] is consistent with our Line Sharing Reconsideration Order." Mass 271 Order at par. 179. But the question before the Commission here is not whether a clause like Verizon's would pass muster under section 271. The question

7/ WorldCom List of Unresolved Issues, Issue III-10, p.52.

is which of two competing contract proposals, each of which is consistent with the Line Sharing Orders, should be adopted in the Virginia contract. WorldCom has every right to argue that its proposal, which provides more guidance to the parties and more detailed, practical commercial rules, is the better proposal, because it will prevent disputes from developing later and facilitate line sharing. The fact that the Commission's orders of general application "have not mandated any particular means" for the parties to line share, Motion at 17 does not imply that it would violate those orders for the parties contracts to specify those means. To the contrary, orders typically set out general rules and contracts typically provide more detailed rules of implementation. That is exactly what WorldCom proposes here.

Verizon has little interest in complying with FCC regulations and would rather engage in an endless series of disputes about how the Commissions rules should be implemented. WorldCom, on the other hand, seeks an agreement that permits it to line share and line split without having to engage in such disputes. It has every right to seek contract language that accomplishes that result.

6. Collocation of Advanced Services Equipment

Verizon has also asked the Commission to dismiss Issue IV-28 which addresses collocation of equipment needed to provide advanced services. Motion at 17-18. Verizon asserts that this issue is pending in a rulemaking in the Advanced Services Docket and that a Settlement Agreement in Virginia defers this issue pending the Commission's decision in that rulemaking.

The contract language which WorldCom seeks to include in the Interconnection Agreement is far narrower in scope than the issue portrayed in Verizon's Motion to Dismiss. In this proceeding, WorldCom seeks contract language specifying that Digital Subscriber Line Access Multiplexers (DSLAMs) can be collocated. Multiplexing (DSLAMs) is necessary for interconnection with the data split part of the loop. It is WorldCom's understanding that Verizon has committed to the Commission and various state Commissions that it will permit collocation of DSLAMs. Indeed, Verizon specifically indicated that it does so in its Pennsylvania section 271 application.

The focus of the Commission's remand proceeding is quite different. There, the Commission is deciding whether CLECs have a right to collocate equipment that performs functions, such as switching, in addition to interconnection or access to UNEs. WorldCom's right to collocate DSLAMs was unaffected by the Court's vacation of the Commission's collocation rules and does not involve issues pending in the Advanced Services Docket, Verizon's statement to the contrary notwithstanding.[8] Indeed, the fact that Verizon apparently believes that the right to install DSLAMs in collocation spaces is not yet established is powerful evidence that this issue should be arbitrated here. Absent a contractual provision, Verizon apparently intends to take the position that WorldCom may not install its own DSLAMs in its collocation spaces.

7. Performance Metrics

Finally, Verizon urges the Commission to dismiss issues relating to performance metrics because the Virginia commission is considering the issue in a generic docket. Verizon also complains that, if this Commission does not dismiss this issue, some carriers will receive metrics

8/ For this reason, the settlement agreement between the parties in Virginia cited by Verizon is inapplicable. Nothing in the settlement agreement addresses this issue, because collocation of DSLAMs is not an issue in the pending rulemaking.

that others will not, and it may be subject to two separate performance plans. Motion at 18-21. None of these complaints has any merit.

Although it is true that the Virginia commission has opened a docket with respect to performance metrics, as Verizon is well aware the Virginia commission has expressly indicated that it is not doing so pursuant to federal law. Thus, the issue presented to this Commission – what performance metrics, standards, reporting and remedies are appropriate pursuant to the 1996 Act – is *not* before the Virginia commission and will not be decided there. Given that, and given the Act's clear directive that a commission arbitrating pursuant to section 252 decide every open issue presented to it, there is no basis to dismiss the claims presented in the two petitions.[9]

The balance of Verizon's arguments are make-weights. Its argument that the Commission should not decide the issue because Verizon is subject to certain performance requirements pursuant to the GTE merger order is meritless. In that Order, this Commission did not purport to find that the requirements imposed there were sufficient to meet the mandates of sections 251 and 252. To the contrary, the Commission expressly indicated that "[i]t is not the intent of these Conditions to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these Conditions, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these Conditions. Nor do the Conditions reflect or constitute any determination or standard regarding Bell Atlantic/GTE's compliance or non-compliance with 47 U.S.C. §§ 251, 252, 271, or 272 or limit in any way the legal rights of Bell

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9/ Verizon's assertion that CLECs have consented to have performance issues decided in generic proceedings is thus beside the point. Those proceedings were not cabined to state law requirements – which may not be as robust as those required under federal law.

Atlantic/GTE with respect thereto. *See* Memorandum Opinion and Order, *In re Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184 (FCC rel. June 16, 2000) at Att. A (Conditions) (footnote omitted); *see also id.* Att. A n.1 ("these conditions shall have no precedential effect in any forum, and *shall not be used as a defense by the Merging Parties in any forum considering additional procompetitive rules or regulations").* Verizon is certainly free to argue in this proceeding that these standards are appropriate (and WorldCom will plainly argue that they are not) but such arguments go to the merits of the proposal, not to the question whether the issue should be dismissed altogether.

Similarly, Verizon's argument that should this Commission arbitrate performance standards, it would be subject to one set of standards with respect to AT&T and WorldCom and another with respect to other carriers is simply wrong. Any requirements imposed by this Commission would be imposed pursuant to federal law. Pursuant to section 252(i), other carriers would be free to opt into those agreements and thus there would not be a "federal" plan that applies only to WorldCom and AT&T. Nor would there be a state plan imposed that governed relationships with all carriers other than WorldCom and AT&T. Because federal law serves as a floor, not a ceiling, any requirements imposed by the Virginia commission that are greater than those imposed by this Commission would not be preempted by this Commission's plan, and all carriers in Virginia would be free to take advantage of that plan. Thus, the fact that the Virginia commission is considering the issue of performance requirements under state law provides no basis on which to dismiss this portion of the parties' petitions.

CONCLUSION

For the reasons set forth above, Verizon's Motion to Dismiss or, in the Alternative, to Defer Consideration of Certain Issues should be denied in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing "WorldCom's Opposition to Verizon's Motion to Dismiss Or, in the Alternative, To Defer Consideration of Certain Issues" were delivered this 9th day of July, 2001, by federal express and regular mail to:

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